DRAWING AMENDMENT

One drawing replacement sheet (Figure 1) is attached to this paper.

REMARKS

Claim Status

Claims 77-110 are pending in the application. This paper amends claims 77-79, 82-85, 89, 90, 97-106, and 110. Claims 77, 90, and 99 are the independent claims of the application.

Drawing Amendment

The Office Action objected to the drawings because not all boxes in Figure 1 were labeled. A replacement drawing sheet with amended Figure 1, in which all the boxes are labeled, is submitted together with this paper. The objection is believed to have been overcome by submission of the replacement drawing sheet.

No new matter is believed to be present in the amended Figure.

Objection to the Claims

The Office Action objected to claims 77, 90, and 99 because, according to the Office Action, the "claims are not structured to specifically associate the executable . . . instructions with the function being performed, such that there is no doubt that the instructions performing these functions are stored on the computer readable medium." The claims have now been amended so that each of

the claims 77, 90, and 99 is directed to a computer-readable memory. As recited in each of these independent claims, the instructions stored in the memory, when executed by at least one processor, cause the at least one processor to perform various steps. We respectfully submit that the amended claims specifically associate the instructions with the functions performed, obviating the claim objection.

Double Patenting Rejections

The Office Action rejected all claims of the present application under obviousness-type double patenting doctrine, as unpatentable over claims 1-75 of U.S. Patent Number 6,317,844. A terminal disclaimer in accordance with 37 C.F.R. §1.321(b) is submitted together with this paper to obviate this double patenting rejection.

The Double Patenting Rejections section of the Office Action (page 3) also mentions U.S. Patent Number 6,421,791 (the " '791 patent"). This appears to be a typographical error, because the '791 patent is not assigned to the assignee of the present application. In any event, we traverse the rejection. Note also that the effective priority date of the '791 patent (June 14, 2000) is later than the priority date of the present application (March 10, 1998).

Art Rejections

Claim 90

The Office Action rejected claim 90 under 35 U.S.C. § 102(b) as being anticipated by Ault *et al.*, U.S. Patent Number 6,192,389 ("Ault" hereinafter). We understand this rejection to be made under 35 U.S.C. § 102(e).

A "claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). (Both *Verdegaal* and *Richardson* cases are quoted with approval in MPEP § 2131.) Independent claim 90 of the present application is directed to a memory with instructions executable "to operate a file system." The instructions include "receiving a file server request at one of a plurality of file servers." Ault does not teach operating a file system or file servers. Therefore, Ault does not anticipate claim 90.

Claims 77-89 & 91-110

The Office Action rejected claims 77-89 and 91-110 under 35 U.S.C. § 103(a) as being unpatentable over Ault in view of Beeler, Jr., U.S. Patent Number 5,819,020 ("Beeler" hereinafter). With respect to independent claim 77, the Office Action states that Beeler teaches "service or server

failure and its recovery process via primary and secondary servers" and "servers backup and recovery due to service disruption," citing Beeler's column 4, lines 48-63, and column 5, lines 58-61. Claim 77, as amended, recites "performing, at said second file server, a file system change in response to a copied descriptor and a service interruption by said first file server." Thus, according to claim 77, a file system change is performed at the second file server in response to service interruption at the first file server. It appears that Beeler does not teach or suggest performing a file system change at the backup (target) server in response to the service interruption at the primary server. Instead, it appears that Beeler teaches restoring files from the backup server to the primary server. At least for this reason, we believe that independent claim 77 is patentable over Ault and Beeler.

Independent claim 99, as amended, recites "responding to a service interruption by performing a file system change in response to a descriptor in said file server change memory," which is similar to the limitation of claim 77 discussed in the immediately preceding paragraph. Therefore, claim 99 is patentable over Ault and Beeler at least for the same reason as claim 77.

Dependent claim 82, as amended, recites that the first file server is disposed for processing the file system changes atomically. Dependent claim 105, as amended, recites a similar limitation. It appears that neither Ault nor Beeler teaches atomic processing of file system changes. At least for this reason, claims 82 and 105 are believed to be independently patentable over the references.

Dependent claim 85, as amended, recites that each of the file servers is coupled to at least a portion of the file server change memory using local memory access, and to at least a portion of the file server change memory using remote memory access. It appears that neither Ault nor Beeler

teaches these limitations. At least for this reason, claim 85 is believed to be independently patentable over the references.

In the above discussion, we have addressed patentability of all independent claims and of several dependent claims. As regards dependent claims not specifically discussed, these claims should be patentable together with their base claims and intervening claims, if any.

CONCLUSION

For the foregoing reasons, Applicant respectfully submits that all pending claims meet formal requirements and are patentable over the references of record. To discuss any matter pertaining to the present application, the Examiner is invited to call the undersigned attorney at (858) 720-9431.

Having made an effort to bring the application in condition for allowance, a timely notice to this effect is earnestly solicited.

Respectfully submitted,

Dated: December 6, 2004

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